

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

DOCUMENT CONTROL

AT RICHMOND, AUGUST 10, 2007

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COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. CLK-2007-00005

Ex Parte: In the matter concerning revised  
State Corporation Commission Rules of  
Practice and Procedure

ORDER FOR NOTICE OF PROCEEDING TO CONSIDER  
REVISIONS TO COMMISSION'S RULES OF PRACTICE AND  
PROCEDURE TO PERMIT ELECTRONIC FILING OF DOCUMENTS

The Commission's Rules of Practice and Procedure, now codified at 5 VAC 5-10-10 et seq. ("Rules"), were last revised in 2001 in Case No. CLK-2000-00311.<sup>1</sup> Since then, changes have occurred in the industries and businesses subject to the regulatory authority of the Commission, including advancement in technology and increased reliance on electronic methods of communication in standard business practices.

The Commission has concluded that, in light of the passage of time and the changes occurring, it is appropriate to revisit our Rules and incorporate a procedure for electronic filing. Accordingly, the Commission Staff has prepared a proposed revision of the Rules of Practice and Procedure ("Proposed Rules"). A copy of the Proposed Rules is attached hereto. Interested parties are invited to comment upon and suggest modifications or supplements to, or request hearing on, the Proposed Rules. Comments or requests for hearing should address only the matters addressed in the Proposed Rules regarding electronic filing of documents. The Commission's Division of Information Resources is directed to cause the Proposed Rules to be

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<sup>1</sup> Commonwealth of Virginia, At the relation of the State Corporation Commission, Ex Parte: In the Matter concerning revised State Corporation Commission Rules of Practice and Procedure, Case No. CLK-2000-00311, 2001 S.C.C. Ann. Rpt. 55.

published in the Virginia Register of Regulations and to make the Proposed Rules available for inspection on the Commission's Internet website.

Accordingly, IT IS ORDERED THAT:

- (1) This matter shall be docketed and assigned Case No. CLK-2007-00005.
- (2) The Commission's Division of Information Resources shall forward the Proposed Rules to the Registrar of Regulations for publication in the Virginia Register of Regulations.
- (3) The Commission's Division of Information Resources shall make a downloadable version of the Proposed Rules available for access by the public at the Commission's website, <http://www.scc.virginia.gov/caseinfo.htm>. The Clerk of the Commission shall make a copy of the Proposed Rules available for public inspection in his office and provide a copy of the Proposed Rules, free of charge, in response to any written request for one.
- (4) Interested persons wishing to comment, propose modifications or supplements to, or request a hearing on the Proposed Rules shall file an original and fifteen (15) copies of such comments, proposals, or request with the Clerk of the Commission, State Corporation Commission, P.O. Box 2118, Richmond, Virginia 23218, on or before September 25, 2007, making reference to Case No. CLK-2007-00005. Any interested person wishing to present evidence and be heard regarding the Proposed Rules should file an original and fifteen (15) copies of a notice of participation as a respondent, as provided in 5 VAC 5-20-80 B, on or before September 25, 2007.

- (5) This matter is continued for further orders of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all public utilities providing service within the Commonwealth of Virginia and to representatives of the insurance industry as shown on the attached appendices and to the individuals and organizations on the service list attached hereto.

Attest:  
Copy  
Teste:

*Joel H. Peck*  
Clerk of the  
State Corporation Commission

STATE CORPORATION COMMISSION, CLERK'S OFFICE  
CLK-2007-00005 Amended Rules of Practice and Procedure

**5VAC5-20-20. Good faith pleading and practice.**

Every pleading, written motion, or other paper presented for filing by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, and the attorney's mailing address and telephone number, and where available, telefax number and email address, shall be stated. An individual not represented by an attorney shall sign the individual's pleading, motion, or other paper document, and shall state the individual's mailing address and telephone number. A partnership not represented by an attorney shall have a partner sign the partnership's pleading, motion, or other paper document, and shall state the partnership's mailing address and telephone number. A nonlawyer may only represent the interests of another before the commission in the presentation of facts, figures, or factual conclusions, as distinguished from legal arguments or conclusions. In the case of an individual or entity not represented by counsel, each signature shall be that of a qualified officer or agent. The pleadings need not be under oath unless so required by statute. ~~The commission may provide, by order, a manner for acceptance of electronic signatures in particular cases.~~

The Commission allows electronic filing. Before filing electronically, the filer shall complete an electronic document filing authorization form, receive a filer authentication identification number from the Clerk of the Commission and otherwise comply with the electronic filing procedures adopted by the Commission. All documents submitted electronically must be capable of being printed as paper documents without loss of content or appearance.

The signature of an attorney or party constitutes a certification that (i) the attorney or party has read the pleading, motion, or other paper document; (ii) to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. A pleading, written motion, or other paper document will not be accepted for filing by the Clerk of the Commission if not signed.

An oral motion made by an attorney or party in a commission proceeding constitutes a representation that the motion (i) is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (ii) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

**5VAC5-20-140. Filing and service.**

A formal pleading or other related document shall be considered filed with the commission upon receipt of the original and required copies by the Clerk of the Commission no later than the time established for the closing of business of the clerk's office on the day the item is due. The original and copies shall be stamped by the Clerk to show the time and date of receipt. ~~The commission may by order make provision for electronic filing of documents, including facsimile.~~

Electronic filings may be submitted at any time. However, to ensure timely filing on the specific day of submission, the document must be received at least one hour before the close of business of the clerk's office. A document submitted electronically shall be printed by the Clerk of the Commission and shall be considered filed with the commission when the document is time and date stamped by the Clerk of the Commission.

When a filing would otherwise be due on a day when the clerk's office is not open for public business, the filing will be timely if made on the next regular business day when the office is open to the public. When a period of 15 days or fewer is permitted to make a filing or take other action pursuant to commission rule or order, intervening weekends or holidays shall not be counted in determining the due date.

Service of a formal pleading, brief, or other document filed with the commission required to be served on the parties to a proceeding or upon the commission staff, shall be effected by delivery of a true copy to the party or staff, or by deposit of a true copy into the United States mail properly addressed and stamped, on or before the date of filing. Service on a party may be made by service on the party's counsel. At the foot of a formal pleading, brief, or other document required to be served, the party making service shall append a certificate of counsel of record that copies were mailed or delivered as required. The commission may, by order, provide for electronic service of documents, including facsimile. Notices, findings of fact, opinions, decisions, orders, or other paper documents to be served by the commission may be served by United States mail. However, all writs, processes, and orders of the commission, when acting in conformity with §12.1-27 of the Code of Virginia, shall be attested and served in compliance with §12.1-19.1 or §12.1-29 of the Code of Virginia.

#### **5VAC5-20-150. Copies and format.**

Applications, petitions, responsive pleadings, briefs, and other documents must be filed in an original and 15 copies. Except as otherwise stated in this chapter, submissions filed electronically are exempt from the copy requirement.

One copy of each responsive pleading or brief must be served on each party and the commission staff counsel assigned to the matter, or, if no counsel has been assigned, on the general counsel.

Each document must be filed on standard size white opaque paper, 8-1/2 by 11 inches in dimension, and must be capable of being reproduced in copies of archival quality. Submissions filed electronically shall be made as a portable document format (PDF) file.

Pleadings shall be bound or attached on the left side and contain adequate margins. Each page following the first page ~~must~~ shall be numbered. If necessary, a document may be filed in consecutively numbered volumes, each of which may not exceed three inches in thickness. Submissions filed electronically may not exceed 100 pages of 8-1/2 by 11 inches in dimension.

Pleadings containing more than one exhibit should have dividers separating each exhibit and should contain an index. Exhibits such as maps, plats, and photographs not easily reduced to standard size may be filed in a different size, as necessary. Submissions filed electronically that otherwise would incorporate large exhibits impractical for conversion to electronic format shall be identified in the filing and include a statement that the exhibit was filed in hardcopy and is available for viewing at the commission or that a copy may be obtained from the filing party. Each exhibit shall be filed in an original and 15 copies.

All filed documents shall be fully collated and assembled into complete and proper sets ready for distribution and use, without the need for further assembly, sorting, or rearrangement.

The Clerk of the Commission may reject the filing of any document not conforming to the requirements of this rule section.

**5VAC5-20-170. Confidential information.**

A person who proposes in a formal proceeding that information to be filed with or submitted to the commission be withheld from public disclosure on the ground that it contains trade secrets, privileged, or confidential commercial or financial information shall file this information under seal with the Clerk of the Commission, or otherwise submit the information under seal to the commission staff as may be required. One copy of all such information also shall be submitted under seal to the commission staff counsel assigned to the matter, or, where no counsel has been assigned, to the general counsel who, until ordered otherwise by the commission, shall disclose the information only to the members of the commission staff directly assigned to the matter as necessary in the discharge of their duties. Staff counsel and all members of the commission staff, until otherwise ordered by the commission, shall maintain the information in strict confidence and shall not disclose its contents to members of the public, or to other staff members not assigned to the matter. The commission staff or any party may object to the proposed withholding of the information.

Upon challenge, the filing party shall demonstrate to the satisfaction of the commission that the information should be withheld from public disclosure. If the commission determines that the information should be withheld from public disclosure, it may nevertheless require the information to be disclosed to parties to a proceeding under appropriate protective order.

Whenever a document is filed with the clerk under seal, an expurgated or redacted version of the document deemed by the filing party or determined by the commission to be confidential shall be filed with the clerk for use and review by the public. A document containing confidential information cannot be submitted electronically. An expurgated or redacted version of the document may be filed electronically. Documents containing confidential information shall be filed in hardcopy and in accordance with all requirements of this chapter.

When the information at issue is not required to be filed or made a part of the record, a party who wishes to withhold confidential information from filing or production may move the commission for a protective order without filing the materials. In considering such motion, the commission may require production of the confidential materials for inspection in camera, if necessary.

**5VAC5-20-240. Prepared testimony and exhibits.**

Following the filing of an application dependent upon complicated or technical proof, the commission may direct the applicant to prepare and file the testimony and exhibits by which the applicant expects to establish its case. In all proceedings in which an applicant is required to file testimony, respondents shall be permitted and may be directed by the commission or hearing examiner to file, on or before a date certain, testimony and exhibits by which they expect to establish their case. Any respondent that chooses not to file testimony and exhibits by that date may not thereafter present testimony or exhibits except by leave of the commission, but may fully participate in the proceeding and engage in cross-examination of the testimony and exhibits of commission staff and other parties. The commission staff also shall file testimony and exhibits when directed to do so by the commission. Failure to comply with the directions

of the commission, without good cause shown, may result in rejection of the testimony and exhibits by the commission. With leave of the commission and unless a timely objection is made, the commission staff or a party may correct or supplement any prepared testimony and exhibits before or during the hearing. In all proceedings, all evidence must be verified by the witness before introduction into the record, and the admissibility of the evidence shall be subject to the same standards as if the testimony were offered orally at hearing, unless, with the consent of the commission, the staff and all parties stipulate the introduction of testimony without need for verification. An original and 15 copies of prepared testimony and exhibits shall be filed unless otherwise specified in the commission's scheduling order and public notice, or unless the testimony and exhibits are filed electronically and otherwise comply with this chapter. Documents of unusual bulk or weight and physical exhibits other than documents need not be filed in advance, but shall be described and made available for pretrial examination.